

## APPENDIX

Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U. S. C. 901, *et seq.* (The provisions are set forth below as they appear in the Code.)

### § 902. Definitions.

When used in this chapter—

\* \* \* \*

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

\* \* \* \*

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

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§ 908. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

\* \* \* \*

§ 909. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

\* \* \* \*

§ 914. Payment of compensation.

\* \* \* \*

(k) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

\* \* \* \*

(m) The total compensation payable under this chapter for injury or death shall in no event exceed the sum of \$7,500. (Mar. 4, 1927, ch. 509, § 14, 44 Stat. 1432; May 26, 1934, ch. 354, § 4, 48 Stat. 807; June 25, 1938, ch. 685, § 7, 52 Stat. 1167.)

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§ 933. Compensation for injuries where third persons are liable.

(a) If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation under an award in a compensation order

filed by the deputy commissioner shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person.

(c) The payment of such compensation into the fund established in section 944 of this title shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person, whether or not the representative has notified the deputy commissioner of his election.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner);

(B) the cost of all benefits actually furnished by him to the employee under section 907 of this title;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Commission, and the present value of the cost of all benefits thereafter to be furnished under section 907 of this title, to be estimated by

the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) If the person entitled to compensation or the representative elects to recover damages against such third person and notifies the commission of his election and institutes proceedings within the period prescribed in section 913 of this title, the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the commission determines is payable on account of such injury or death over the amount recovered against such third person.

(g) If a compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this chapter, the employer shall be liable for compensation as determined in subdivision (e) only if such compromise is made with his written approval.

(h) The deputy commissioner may, if the person entitled to compensation under this chapter is minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election.

(i) Where the employer is insured and the insurance carrier has assumed the pay-

ment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section (Mar. 4, 1927, ch. 509, § 33, 44 Stat. 1440; June 25, 1938, ch. 685, §§ 12, 13, 52 Stat. 1168). \* \* \*

